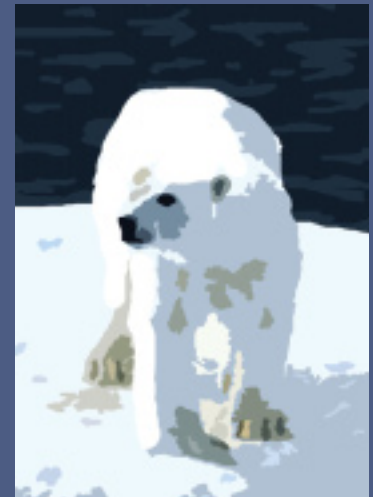


THE SAGA OF BILL C-30: FROM CLEAN AIR TO CLIMATE CHANGE, OR NOT

Elizabeth May

The environment was nowhere to be seen among the top five priorities of the Harper government when it came into office last year, but public opinion soon forced global warming and climate change onto the agenda. Yet the government's initial version of its clean air bill was so badly bungled that Prime Minister Harper gratefully accepted NDP leader Jack Layton's offer to refer it to a special committee of the House. In January, Harper also shuffled the embattled Rona Ambrose off the firing line and brought in the combative John Baird as Environment Minister. "The saga of Bill C-30," writes Green Party leader Elizabeth May in this update, "is a long way from resolved." She concludes that "climate is very likely to remain an election issue."

L'environnement ne figurait nulle part parmi les cinq priorités du nouveau gouvernement Harper. Mais l'opinion publique a bientôt contraint celui-ci à intégrer le réchauffement et les changements climatiques à son programme. Cela dit, la version initiale du projet de loi sur l'assainissement de l'air était si bâclée que le premier ministre a volontiers accepté l'offre du chef du NPD, Jack Layton, de renvoyer le tout à un comité spécial de la Chambre des communes. En janvier, Stephen Harper a aussi retiré de la ligne de feu une Rona Ambrose assiégée, la remplaçant au ministère de l'Environnement par le combatif John Baird. « La saga du projet de loi C-30 est loin d'être terminée », écrit la dirigeante du Parti vert, Elizabeth May, selon qui le « climat constituera vraisemblablement un enjeu électoral ».



It is a saga. A story of love and betrayal; of heroics and scandal; of a fight to the death for the future of the planet. It is at least the story of an overwrought and oversold piece of legislation called Bill C-30, *The Clean Air Act*.

The Harper government came to power pledging to give priority to five things. Its demi-decimal determination did not include any actions for the environment. Nothing was said that suggested the Harper government would do more than allow its first environment minister, the bright and badly used Rona Ambrose, to try to dance fast enough that no one would notice that Canada's commitment to action on climate change was a thing of the past.

The climate issue had been invisible in the 2006 election campaign. The announcement by Stephen Harper that a future Conservative government would feel free to ignore legally binding targets in the Kyoto Protocol was made late in the campaign, in an offhand way to a French-language reporter for Canadian Press in Halifax. It was virtually ignored by the major national newspapers. (Only the *Toronto Star* gave it a front-page reference. It was invisible in the *Globe and Mail*, not even rating a mention in the *Globe's*

summary of environmental positions of all major parties published the Saturday before election day.) Sixty-four percent of Canadians voted for parties that supported Kyoto, and no doubt many of those who voted Conservative did so even though they also favoured implementation of Kyoto.

Learning from 2004, the Conservative statements were murky on the party's commitment to action on climate change. Lacking any media scrutiny or traction in the campaign, the difference between supporting a "made-in-Canada plan for greenhouse gas emission reductions" and pursuing Kyoto was far too nuanced for voters who supported Harper to be dubbed anti-Kyoto.

Ambrose kept up a steady stream of deeply opaque rhetoric. On CTV's *Question Period* on May 21, 2006, Ambrose's tap-dancing performance included the following mind-numbing monologue:

Our strategy is to help the international community to reach a consensus on climate change. We want to see everyone at the table. It's a crucial time in the talks in Bonn right now. It's a crucial time for climate change, the climate change international debate, and Canada

has come to the table with a belief and a position that we need to see everyone at the table. We need to emerge from these talks with a comprehensive and an inclusive approach that includes all countries. That is what that document

The public was not deluded by the doublespeak, and Prime Minister Harper and his inner team realized an environmental initiative was required. By summer, the Harper government was making noises about a new initiative to tackle clean air. The first touted effort was described as “Green Plan 2.” This raised hopes of a serious follow-up to the Mulroney Green Plan of the early 1990s. Revisiting the Green Plan, brought forward by Environment Minister Jean Charest, would have been a good foundation for Harper’s environmental policy. Much that was good in that plan had been lost through Liberal budget cutbacks and neglect.

shows, and actually that document, Jane, was a draft document that ended up being our public document that’s posted on the United Nations website. So we’ve always been transparent about how we feel. The Prime Minister has been clear that we feel very strongly that all countries have to contribute to this global problem. And Canada’s ready to contribute and we want to see all countries at the table.

Deciphering the above requires recourse to the ultimate authority in bafflegab and nonsense, Lewis Carroll. For a plain explanation of Harper’s climate policy, viewers might as well have heard “Twas brillig and the slithy toves did gyre and gimble in the wabe.”

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For example, the cancellation of the State of the Environment report, launched by the Mulroney government and cancelled by the Chrétien government, reduced fundamental information that guided policy. This report relied on solid data collection, much of which has also been cancelled, to pull together an authoritative, publicly accessible report on Canadian progress in meeting environmental indicators. When it was cancelled, Alberta commentator Andrew Nikiforuk compared it to a blind man selling his guide dog as a cost-cutting measure.

That said, it must be noted that the Mulroney Green Plan has increased in lustre particularly in hindsight due to the poor performance of governments since. The reality is that the first Green Plan was more a fund than a plan.

A revised and updated Green Plan 2 would have been a sensible approach, but as the weeks wore by, Ambrose, appearing before a parliamentary committee, began the process of lowering expectations. It would not, she said, be as much a “plan” as an “approach.”

In Vancouver, in early October, the Prime Minister assembled a photo op in which he announced that a new bill

would emerge soon. The Prime Minister promised a Clean Air Act, but provided no details. He took a swipe at Kyoto, bragging that his new plan was not developed in an “exotic location.” He dragged Environment Minister Rona Ambrose, Natural Resources Minister Gary Lunn and Health Minister Tony Clement to Vancouver, where they participated in the press conference without being allowed to speak. As Don Martin quipped in the *National Post*, they filled the role usually played by potted palms, arrayed in a tasteful semi-circle behind their boss.

By the time Minister Ambrose announced the *Clean Air Act*, at a briefing interrupted by a fire alarm in Centre Block, allowing reporters a breath of actual fresh air as Ambrose stumbled through her presentation, it was the most overhyped legislation in Canadian environmental law history. This alone is really quite an accomplishment, Canadian green rhetoric usually exceeding substance.

Rather than being a new Act, it was, in fact, a set of amendments to Canada’s existing *Canadian Environmental Protection Act*. That Act had in 1986, when first unveiled, been described by the environment minister as the strongest environmental law in the Western hemisphere. It wasn’t, but it was surely more than adequate, without amendment, to meet the stated goals of Minister Ambrose and Prime Minister Harper.

When revealed, Bill C-30 was certainly underwhelming. It was, as noted, not a new piece of legislation, but a set of amendments to the existing *CEPA*.

In addition to the legislative amendments, there was also a notice of intent to regulate. It was in the notice of intent that the Harper government’s first and, to this date, only greenhouse gas reduction target was revealed. While Kyoto targets are set against a 1990 baseline of emissions, the Harper

government moved into a unique stance, gauging emissions reductions against 2003 levels. With this deft sleight of hand, its goals started against a baseline 20 percent higher than that of any other government in the world. While Kyoto pledges reductions of 6 percent below 1990 levels and scientists urge reductions of 30 percent below 1990 by 2020, leading to 80 percent below 1990 by 2050, the Harper target was 45 to 65 percent below 2003 levels by 2050. Many in the media latched on to the absurdity of the year 2050 as the target. However, what was far more worrying was that the 2050 goal when translated into the base year used by the rest of the world became a goal for massive sea level rise and dangerous climate instability. By 2050, Harper's government would have had us achieve the levels of reductions now understood to be urgent by 2020.

The Bill itself, as it stood on first reading, represented a substantial threat to the federal government's ability to regulate greenhouse gases and air pollution. That reality was entirely missed by media coverage, and requires some explanation.

The existing *CEPA* contained all the legislative powers required by a government to meet the goals of reducing air pollution and meeting Kyoto targets. What is more, the existing legislation has already faced a constitutional challenge that went all the way to the Supreme Court of Canada. Hydro-Québec had challenged the constitutional purview of the federal government to regulate toxic substances in the face of a federal regulation within *CEPA* to control PCBs. In the majority opinion, Justice Gerald LaForest had ruled that the concern for toxic substances was a legitimate matter of national concern, and the law withstood the challenge. Part 5 of the Act allowed for "toxic" to be defined in a fashion well beyond a lay understanding of something poisonous. It also included any substance that, when released into the environment in sufficient quantities, could cause serious or irreversible envi-

ronmental damage. In that context, greenhouse gases met the definition of "*CEPA* toxic."

The use of the word "toxic" to describe greenhouse gases had proven controversial and delayed action in the previous government. As then Conservative environment critic Bob Mills had argued, babies exhale carbon dioxide. "Are we to conclude that baby's breath is toxic?" Industry groups had long lobbied to change the nomenclature for fear that otherwise non-toxic regulated substances would be labelled "toxic," which would hurt their trade in commerce.

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In the fall of 2005, Dion succeeded in taking the first step to regulate GHGs in Canada. He added the six GHG chemicals to schedule A of *CEPA*. As *CEPA* works one chemical at a time, through scheduling and then regulating, the Act was completely primed to enforce binding reductions on GHGs at the very moment the Martin government fell.

regulate GHGs using *CEPA*. In order to avoid the perception problem around the word "toxic," the government of the day attached the permission to regulate GHGs under *CEPA*, while amending the Act to remove the word "toxic," to the budget implementation bill. It was audacious and designed to get regulations in place for greenhouse gases. And it nearly brought down Paul Martin's minority government.

The leader of the official opposition, Stephen Harper, savaged the tying of amending *CEPA* and regulating GHGs to a budget implementation bill. And, in a strange twist, the media reported he was aided by environmental groups.

The environmental movement had split over the proposal. Those groups focusing their work on climate change thought the approach was

acceptable and that anything that moved GHGs to speedy regulation was a good idea. Those groups working on toxic chemical regulation were outraged, believing that any effort to remove the word "toxic" was part of an industry plot and must be vigorously opposed. As head of the Sierra Club at the time, I wrote to the *Globe and Mail* and suggested that the environmental groups' criticism constituted "friendly fire" and should not be lumped in with Harper's efforts to block action to regulate GHGs. Sadly, the effort to regulate within the budget implementation bill was stillborn. As the budget implementation bill was clearly a "money bill," the vote would be one of confidence, and its defeat would have brought down the government. The GHG regulation and *CEPA* amendment sections were removed.

As regulations of GHGs for those large industries strangely known in the governmental lexicon as "large final emitters" was a part of Dion's "Project Green" (a belated and weak climate plan that was the best thing offered in a dozen years of non-plans), Dion resolved to move ahead with regulations, regardless of the presence of the word "toxic" in the definition.

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In order to regulate GHGs, no new legislative powers were required. There was no need for a new Act.

Strangely, the new Act removed air pollution and GHGs from the safe, pre-tested, Supreme-Court-approved part 5 of the Act, and added a part 5.1, dumping all air pollutants and GHGs in the new section and absurdly referring to a new part 5.1 as a "clean air act."



Jason Ransom, PMO

The “bright and badly used” Rona Ambrose, then minister of the Environment, was under constant fire in the House last year. She bore the brunt of the criticism for the Harper government’s bungled rollout of the *Clean Air Act*, and was moved off the firing line in a January cabinet shuffle that saw her replaced by the combative John Baird.

The new Act was further vulnerable to a future court challenge through its poor drafting. The definition section split GHGs apart from air pollution, clearly defining “air pollution” so as not to include “greenhouse gases” (GHGs). It was all rather odd, unless it was deliberate. The “purpose” section of 5.1 then went on to assert that the goal of the new *Clean Air Act* was to reduce “air pollution,” with no reference to greenhouse gases or climate change. Needless to say, the word “Kyoto” did not appear anywhere in the Act.

The whole GHG section of the Act appeared designed to fail.

In addition to the strange and weakened air quality and greenhouse gas sections of Bill C-30, there were a few useful new tools. They would usually have been referred to as “house-keeping measures.” Previous regulations had not allowed governmental control of products that create emissions, like wood stoves. Previous regu-

lations had failed to have sufficient flexibility for the blending of ethanol fuels. These items were tidied up.

The only useful and innovative things in C-30 were a passage enabling the creation of National Air Quality Objectives, the inclusion of “indoor air quality” and the resuscitation of the long-comatose Canadian *Motor Vehicle Fuel Consumption Standards Act*.

The regulation of vehicle emissions was announced in general in Harper’s Vancouver photo op. In the context of this article’s undercurrent of overhyped environmental laws and weak delivery, the vehicle fuel regulatory scheme is likely the champ of all time.

In 1981 the Parliament of Canada passed the *Motor Vehicle Fuel Consumption Standards Act*. Carmakers, in a panic, went to Prime Minister Trudeau and begged for the Act to be scrapped. Regulations to deliver fuel economy had been passed in the United States, where

they were known as Corporate Average Fleet Economy (or CAFE), but Canadian carmakers (being American carmakers) lobbied hard against anything but voluntary measures. The Bill was never proclaimed. The threat of this law was the basis of a voluntary agreement between carmakers and the government in the early 1980s. That voluntary agreement was the source of Canada’s CAFE standards for about 20 years. The agreement required the same standards in Canada as in the United States. It was successful until Canada expressed a desire to go beyond US law and establish a Canadian standard in Prime Minister Chretien’s first Kyoto plan in 2000. Nevertheless, the Canadian government persisted in wanting a voluntary agreement. However, this time, unlike the 1980s, there would be no US law forcing the manufacturers to improve efficiency.

Ultimately, a new voluntary approach was negotiated and

signed in the spring of 2005. In it the carmakers pledged to reduce greenhouse gases by the equivalent of 25 percent, or 5.3 megatonnes, by 2010. Before the ink on the agreement was dry, carmakers had begun to find loop holes. Meanwhile, in the process of lobbying and pressuring the carmakers, the long-ignored *Motor Vehicle Fuel Consumption Standards Act* was resurrected — not as law, but as threat.

By October 2004, Dion was making frequent public threats to regulate the car industry. In the first week of November, he was at the table when the presidents of the five Canadian manufacturers (GM, Ford, DaimlerChrysler, Toyota and Honda) met with the Minister of Natural Resources. His presence at this meeting gave a clear message to the industry for the first time. The industry was now aware that the government was serious. Still, the government blinked. With the industry pushing back and mobilizing in vote-rich southern Ontario, the government moved from the threat of regulations to another voluntary agreement.

The irony that the Harper government was willing to bring in a law passed by a Liberal majority government and ignored by successive Liberal and Conservative governments over a period of a quarter-century is the oddest piece of the tangled web of C-30. That effort was foreshadowed by the last federal government. The threat might have crystallized by 2010 when the memorandum of understanding runs out, but there was no guarantee of that outcome.

Initial reaction to Bill C-30 was swift and merciless. The opposition parties in the House announced within 24 hours that they would all vote against it. As the new leader of the Green Party, I identified the few useful bits, but stressed that none of them required a new law. Media coverage focused on the least dangerous but easily identifiable weaknesses of the Bill and the intent to

regulate. Rona Ambrose continued to claim it was the best thing since sliced bread, but no one seemed to believe her.

It was widely anticipated that the Bill would die at the first call for approval to go to committee.

Then, in the last week of October, Jack Layton saved the Bill. Some speculated he wanted to be able to campaign in the London North Centre by-election as having won some green ground from Harper. (As the Green candidate in that by-election, I was not the one who originated this theory, but it gained credibility as NDP candidate Megan Walker mentioned at every venue that Jack Layton had forced C-30 to a special committee.) Conservative insiders confided that the Harper inner circle figured that Layton would want a reward for helping them save the Bill. They wondered what he would demand in return for helping get the Bill to committee. Instead, Layton simply asked to see the Bill move to a special legislative committee, unfettered by approval in princi-

ple at second reading. In the London North Centre campaign, I would refer to Layton's rescue of the Bill as an early Christmas present to Mr. Harper.

the Prime Minister had not had any scientific briefing on climate change. Nevertheless, by early January, the Prime Minister emerged with a New Year's resolution to "do more" in dealing with the climate issue, which he said he realized was serious. To signal his new resolve, on January 4, he shuffled his cabinet and placed one of his favourite cabinet members into the environment portfolio. He chose Ottawa area MP John Baird, a career Conservative politician, with experience in the cabinets of Ontario premiers Mike Harris and Ernie Eves, removing Rona Ambrose and leaving her as the scapegoat.

The hearings on C-30 began after the Christmas recess before a new all-party committee. Rather than the Standing Committee on the Environment, which normally would have had carriage of the Act, the new C-30 committee was chaired by Conservative Laurie Hahn and was both all-party and all-male. Its hearings were

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Just before the Christmas holidays, Stephen Harper in a CBC radio interview referred to the "so-called greenhouse gases." There was no sense that he had popped the DVD of *An Inconvenient Truth* (an actual present from Jack Layton of many months earlier) into the player for a review of the science. In fact, the *Hill Times* reported that

the most fractious, partisan, unpleasant and unruly I have ever witnessed. (Speaking of "witnessed," my efforts to appear as a witness were rejected.)

The committee heard from a vast number of witnesses. All of those with environmental law background confirmed that the new law offered no new required tools to achieve the government's stated goals. Even the Forest Products Association of Canada urged the committee to get on with meeting Kyoto targets and endorsed the environmental coalition proposals. Many witnesses

expressed the view that meeting Kyoto targets purely through domestic action was no longer possible. Some urged a new focus on technology. Many urged that the most effective step would be a carbon tax. Others focused solely on the weakness of the Bill in dealing with air pollution.

By the end, the Bill was unrecognizable. The bad sections had been uprooted. The constitutional vulnerabilities had been fixed. The new Liberal carbon budget had been added. New sections calling for meeting Kyoto, between 2008 and 2012, with mid-term targets at 2020, 2030 and 2050, were in place, and they were the right targets.

The most pugnacious witness was the new environment minister, John Baird. He appeared with a single slide on his PowerPoint. It was a graph of increasing GHG emissions with a solid line to 2007 and then a dotted line thereafter, one that continued to climb into the future. No one asked him why his government's intentions and new plans would allow emissions to rise. He had a fancy laser pointer that kept going to the place when Stéphane Dion was elected or when Stéphane Dion became environment minister. His heated exchanges with the equally pugnacious David McGuinty brought parliamentary committee hearings to a new low. As Aaron Freeman commented in a *Hill Times* article, the C-30 committee clearly needed "adult supervision."

The clause-by-clause review of amendments may have been the most childish and nasty part of the hearings. Last-minute Liberal amendments were met with frustration and feigned disbelief from the NDP and the Conservatives. Watching the process, the only party that always seemed to keep its eye on the ball and climate as an issue was, perhaps surprisingly, the Bloc and its exceptional environment critic, Bernard Bigras, although individual MPs did shine brighter than their caucuses — gold stars to NDP MP Dennis Bevington and Liberals John Godfrey and Francis Scarpelligla.

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ment critic, brought in champagne and cake. Conservatives refused either. What was there to celebrate? Brian Jean, Conservative MP from Fort McMurray, whose prosecutor skills were used to cross-examine witnesses until they said the opposite of what they had intended, said that he didn't drink champagne at a funeral.

Was the Bill dead?

The saga of Bill C-30 is a long way from resolved. At this writing, it has not been brought to the House of Commons. It has had a complete overhaul with no sign the government will accept what has been done to its Bill at first reading. The only intriguing hint was an interview with John Baird on CBC Radio's *The House*. Strangely, in describing the C-30 process, Minister Baird went out of his way to say several times how helpful the NDP members had been. This was certainly not apparent in the hearings. The evisceration of the Bill appeared equally concerted from all three opposition parties. The only difference was that the NDP generally could not resist asking witnesses, including John Baird, if they did not agree that the Liberals had been really dreadful. Conservatives seemed almost embarrassed by the silliness of the question and I wondered often how Nathan Cullen could bring himself to keep asking it.

Here are the options and where the Baird hints lead me.

One option is, of course, that the Harper government will allow the Bill to die. It will blame the opposition parties for stopping action to clean the air and reduce GHGs. It can campaign on how it needs a majority to stop these obstructionist opposition parties from blocking "action." This strategy might work as long as the public can be kept from understanding how dangerous the Bill actually was.

Another option would be to call the Bill a confidence vote and bring back the original Bill, or one so little changed that it would fail, triggering an election. At this point blaming of the opposition parties for thwarting action would still be the likely scenario.

The third, and I will now lay bets that it is the most likely, is that the Bill will come back to the House, rewritten so that only the NDP can support it. Both Harper and Layton could take credit for progress, praising their ability to work with each other. After all, this is precisely how Baird, in his previous role as president of Treasury Board, got the *Accountability Act* through the House. The likely scenario: the new Bill would strip out Liberal amendments for the carbon budget, take out the 2012 Kyoto target but keep an appropriate target for 2050, put the air pollution and GHG sections back where they belong in part 5, and move from intensity targets in the short term (the only kind yet accepted by the Harper government) to hard caps in the future.

Bottom line: the bill without Kyoto is not acceptable. But will a Harper-Layton partnership obscure this to the voter?

Climate is very likely to remain an election issue, whenever that may come.

Elizabeth May, former director of the Sierra Club of Canada, is the leader of the Green Party of Canada. A former policy adviser to Environment Minister Tom McMillan in the Conservative government of Brian Mulroney, she has closely tracked climate change for more than 20 years. emay@magma.ca